

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

Appl. No. : 10/829,091
Applicants : John EIDSON et al.
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Examiner : JACOBS, Lashonda T.
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Title: DIFFUSING CONFIGURATION DATA TO DISTRIBUTED
DEVICES

REPLY BRIEF

Mail Stop **Appeal Brief**
Commissioner for Patents
P.O. Box 1450
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Sir:

In response to the Examiner's Answer dated 25 March 2010, Applicants hereby submit this Reply Brief.

RESPONSE TO EXAMINER'S ARGUMENTS

Applicants respectfully submit that claims 1-8, 10-16, 18-21, and 24-27 are all patentable under 35 U.S.C. § 102 over McDonnell et al. U.S. Patent Application Publication 2001/0028313 ("McDonnell") for at least the following reasons.

Claim 10

In the Appeal Brief, Applicants noted that the method of claim 10 includes providing to one or more distributed devices a set of configuration data that configures the one or more distributed devices for performing a measurement/control function; and diffusing the provided configuration data among the distributed devices. Applicants also noted that McDonnell does not disclose providing a set of

configuration data to any distributed devices that is also diffused among the distributed devices.

The Examiner responded by citing – without any specificity – no less than **TEN** full paragraphs ([0057]-[0058] and [0062]-[0069]) of McDonnell where this combination of features is supposedly, somehow and in some way, disclosed.

In the FINAL Office Action (e.g., page 8, line 4), the Examiner had identified McDonnell's telemetry data as supposedly corresponding to the configuration data of claim 10.

Now in the Examiner's Answer, the Examiner states that "*settings parameters*" that are supposedly disclosed in the cited paragraphs of McDonnell correspond to the configuration data of claim 10.

Unfortunately, McDonnell does not mention "*settings parameters*" – either in the cited paragraphs or anywhere else.

In contrast to the features recited in claim 10, the cited paragraphs of McDonnell disclose "*the collection of geographically dispersed **readings** about a parameter of interest*" – in other words, measurement data measured by the devices, not configuration data that configures the one or more distributed devices for performing a measurement/control function.

Now the newly-cited paragraph [0069] (and the subsequent paragraphs [0070] – [0072]) does disclose that the service system [40] coordinates the taking of measurements about a parameter of interest by the registered users. However, these paragraphs fails to disclose providing to one or more distributed devices a set of configuration data that configures the one or more distributed devices for performing a measurement/control function; and **diffusing the provided configuration data** among the distributed devices.

The burden for establishing that McDonnell anticipates Applicants' claim 10 rests on the Examiner. Applicants respectfully submit that the Examiner has clearly failed to meet that burden by failing to identify any set of configuration data in McDonnell that configures the one or more distributed devices for performing a measurement/control function; and which is also diffused among the distributed devices.

Therefore, for at least these reasons, Applicants submit that the rejection of claim 10 is in error and accordingly respectfully request that it be overturned.

Claims 11-16 and 25

In the Appeal Brief, Applicants noted that claims 11-16 and 25 depend from claim 10. So claims 11-16 and 25 are deemed patentable for at least the reason set forth above with respect to claim 10, and for the following additional reasons.

Claim 15

In the Appeal Brief, Applicants noted that, among other things, the method of claim 15 includes forming a first communication channel between a first one of the distributed devices and a kiosk; communicating the configuration data from the first distributed device and the kiosk via the first communication channel; forming a second communication channel between a second one of the distributed devices and the kiosk; and communicating the configuration data from the kiosk to the second distributed devices.

In other words, claim 15 recites relaying configuration data that configures the one or more distributed devices, from a first device to a kiosk (via a first communication channel), and then from the kiosk to a second device (via a second communication channel).

The Examiner argues in the Examiner's Answer that these features are **inherent** in McDonnell.

Applicants respectfully disagree. Applicants respectfully submit that McDonnell does not disclose – inherently or otherwise – forming a first communication channel between a first one of the distributed devices and a kiosk; communicating the configuration data from the first distributed device and the kiosk via the first communication channel; forming a second communication channel between a second one of the distributed devices and the kiosk; and communicating the configuration data from the kiosk to the second distributed devices.

Furthermore, the Examiner has not even come close to meeting the threshold burden of proof required for a rejection based on inherency.

M.P.E.P. § 2112 provides that:

EXAMINER MUST PROVIDE RATIONALE OR EVIDENCE TENDING TO SHOW INHERENCY. The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); In re Oelrich, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). “*To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’*” In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted)

Here, the Examiner has not only failed to establish that the recited features of claim 15 are **necessarily present** in McDonnell, but indeed the Examiner has failed to even establish that the recited features of claim 15 *may* be present in McDonnell.

Therefore, for at least these additional reasons, Applicants respectfully submit that claim 15 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 15 over McDonnell be withdrawn, and claim 15 be allowed.

Claim 16

In the Appeal Brief, Applicants noted that, among other things, McDonnell does not disclose forming the first communication channel of claim 15 with a kiosk in response to a physical proximity between the first communication device and the kiosk.

The Examiner argues in the Examiner’s Answer that these features are also **inherent** in McDonnell.

Applicants again respectfully disagree. In particular, Applicants respectfully submit that the Examiner has failed to establish that the recited features of claim 16 are necessarily present in McDonnell.

Therefore, for at least these additional reasons, Applicants respectfully submit that claim 16 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 16 over McDonnell be withdrawn, and claim 16 be allowed.

Claim 25

In the Appeal Brief, Applicants noted that, among other things, the method of claim 25 includes determining a relative staleness of different sets of configuration data.

In the Examiner's Answer the Examiner argues that McDonnell's "*system tries to verify that the **reading** has the correct timestamp and the **reading** was not sent at a later time*" (emphasis added).

Readings are measurement data measured by a device, not configuration data that configures the one or more distributed devices.

Therefore, for at least these additional reasons, Applicants respectfully submit that claim 25 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 25 over McDonnell be withdrawn, and claim 25 be allowed.

Claim 24

In the Appeal Brief, Applicants noted that, among other things, the measurement/control system of claim 24 includes a set of distributed devices each having means for obtaining configuration data that specifies a measurement/control function from a configuration data source and means for diffusing the configuration data among the distributed devices.

In the Examiner's Answer the Examiner fails to identify anything in McDonnell that supposedly corresponds to the recited means for diffusing **configuration data that specifies a measurement/control function** among the distributed devices.

As explained above with respect to claim 10, Applicants respectfully submit that McDonnell's distributed devices do not diffuse configuration data that specifies a

measurement/control function among the distributed devices.

Therefore, Applicants respectfully submit that claim 24 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 24 over McDonnell be withdrawn, and claim 24 be allowed.

Claims 1-8

In the Appeal Brief, Applicants noted that claims 1-8 depend from claim 24. Claims 1-18 are deemed patentable for at least the reasons as set forth above with respect to claim 24, and for the following additional reasons.

Claim 1

Among other things, in the system of claim 1, each distributed device includes means for determining a relative staleness of a set of configuration data stored in the distributed device.

For similar reasons to those set forth above with respect to claim 25, Applicants respectfully submit that the Examiner's Answer fails to establish that McDonnell discloses a system including this combination of features, and indeed Applicants respectfully submit that McDonnell fails to disclose a system including this combination of features.

Therefore, for at least these additional reasons, Applicants respectfully submit that claim 1 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 1 over McDonnell be withdrawn, and claim 1 be allowed.

Claims 5 and 6

For similar reasons to those set forth above with respect to claims 15 and 16, Applicants respectfully submit that the Examiner's Answer fails to establish that McDonnell discloses a system including the combinations of features of claims 5 and 6, and indeed Applicants respectfully submit that McDonnell fails to disclose a system including this combination of features of claims 5 and 6.

Therefore, for at least these additional reasons, Applicants respectfully submit that claims 5 and 6 are patentable over McDonnell. Accordingly, Applicants respectfully request that the rejections of claims 5 and 6 over McDonnell be withdrawn, and claims 5 and 6 be allowed.

Claim 8

In the system of claim 8, the means for diffusing includes means for determining a relative staleness of a set of configuration data stored in a kiosk and a set of configuration data stored in the distributed devices.

At the outset, as explained above with respect to claim 25, a “reading” is measurement data, not configuration data that specifies a measurement/control function.

Furthermore, even if *arguendo* McDonnell did disclose “configuration data” stored in both a distributed device and a kiosk, the Examiner has failed to cite anything that discloses that means for determining a relative staleness of the two sets of data.

Therefore, for at least these additional reasons, Applicants respectfully submit that claim 1 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 1 over McDonnell be withdrawn, and claim 1 be allowed.

Claim 18

In the Appeal Brief, Applicants noted that among other things, the device of claim 18 includes means for obtaining from a remotely-located configuration data source a set of configuration data that configures a second device, spaced apart from the first device, for performing a measurement/control function; and means for diffusing the configuration data from the first device to the second device.

For similar reasons to those set forth above with respect to claim 24, Applicants respectfully submit that McDonnell does not disclose any method including this combination of features.

Therefore, Applicants respectfully submit that claim 18 is patentable over McDonnell. Accordingly, Applicants respectfully request that the rejection of claim 18 over McDonnell be withdrawn, and claim 18 be allowed.

Claims 19-21 and 26-27

In the Appeal Brief, Applicants noted that claims 19-21 and 26-27 depend from claim 18 and are deemed patentable for at least the reason set forth above with respect to claim 18, and that claim 21 is also deemed patentable for similar reasons

to those set forth above with respect to claim 15, and that claim 26 for similar reasons to those set forth above with respect to claim 25.

Therefore, for at least these additional reasons, Applicants respectfully submit that claims 19-21 and 26-27 are patentable over McDonnell. Accordingly, Applicants respectfully request that the rejections of claims 19-21 and 26-27 over McDonnell be withdrawn, and claims 19-21 and 26-27 be allowed.

In Conclusion . . .

For all of the foregoing reasons, Applicants respectfully request that the rejections of claims 1-8, 10-16, 18-21, and 24-27 be withdrawn, the claims be allowed, and the application be passed to issue. If necessary, the Commissioner is hereby authorized in this reply to charge payment or credit any overpayment to Deposit Account No. 50-0238 for any additional fees required under 37 C.F.R. § 1.16, 37 C.F.R. § 1.17 or 37 C.F.R. § 41.20, particularly extension of time fees or any additional fee required for filing this Reply Brief.

Respectfully submitted,

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